

BIF's Response to TRAI's CP on "Regulatory Framework for Platform Services" dated 07.12.2020

At the outset, we wish to thank the Authority for taking up this subject for public consultation. Platform services allow MSOs and LCOs to differentiate their offerings, and ultimately provide a better service to consumers. Therefore, any attempts to reform the regulatory framework for platform services are highly desirable. We provide our inputs below and hope that these aid in establishing a forward-thinking framework for platform services that benefits both consumers and the industry.

Issue 1: Legal Status of DPOs offering Platform Services (PS)

In its recommendations dated 19.11.2014, the authority recommended that provision of Platform Services must be contingent upon the provider incorporating as a company under the Indian Companies Act, 2013 and the rules framed thereunder. Vide its letter to TRAI dated 23.10.2020, the MIB clarified that *"this recommendation was not accepted by IMC in respect of MSOs/LCOs, since most of the MSOs/LCOs operated in small areas are either proprietorship or partnership firms which are not registered as companies. Making it obligatory for MSOs/LCOs to convert into companies may not be in line with the promotion of ease of doing business. IMC decided that anybody registered as a DPO, either with MIB or with post office, shall be eligible to carry PS channels."*

We agree with the MIBs assessment, as well as the TRAI's response in the current consultation paper. As highlighted by the Authority, it is critical to *"specify a compliance structure to ensure that those providing platform services make full disclosure on ownership status and comply to content code and advertisement code while providing platform services."*

We believe it is critical for local businesses to be able to provide services quickly, efficiently, and to a standard that is acceptable to consumers, and profitable for entrepreneurs. The governments focus on the ease of doing business would be greatly supported by a framework that allows local innovations to take root organically, unimpeded by red tape. At the same time, the framework must ensure that DPOs are required to comply with basic transparency requirements that cover ownership structures, channel capacity as well as compliance with appropriate content distribution codes and rules.

Issue 2: Limit on the number of PS channels that can be offered by DPOs

In its original recommendations the Authority recommended that *"A maximum number of 5 PS channels may be offered by the cable operators in non-DAS areas. In DAS areas and for all other platforms, a maximum of 15 PS channels may be offered by the DPOs. These numbers are the number of PS channels to be made available at the subscribers' end."* The MIB in its letter dated 23.10.2020 correctly stated that *"With the completion of digitization process, there is no distinction between DAS and non-DAS area. Further, it is noted while it is necessary to restrict capacity of PS channels carried by DPOs as recommended by TRAI, it is not in the interest of the evolving and dynamic market like Cable TV to restrict the number of PS channels. Regulation may only intervene to the point of upholding customer interests, ethical business practices, ease of doing business and safeguard against violation of programming code and advertisement code."* The MIB therefore recommended that *"MSOs may be permitted to operate to a maximum of 5%, and LCOs to a*

maximum of 1%, of the total permitted satellite channel being carried by them as permitted PS channels without any upper limit."

In its current consultation paper, the authority noted that *"The domain and functioning of the DPOs is different from that of the broadcasters. The main purpose of granting permission/ registration/ license to Distribution.*

Platform Operators (DPOs) is distribution of TV channels covered under uplinking/ downlinking guidelines. Thus it is essential that the major portion of the distribution capacity of these platforms is used for the intended purpose. A small portion of this distribution capacity may be used for PS so as to meet the specific need of the subscribers of these DPOs."

We believe that there is no need to regulate the number of PS channels with absolute limits. Moreover, availability and scalability of channel capacities vary significantly between terrestrial and satellite mediums, and the framework must account for these differences. For satellite providers, the number of PS should be based on an objective accounting of the providers channel capacity and subscriber base. While PS should certainly be permitted without an absolute upper limit on the number of such channels, the same should not block the carriage of broadcast content. We believe utilization of distribution capacity would be appropriate if it does not impede the retransmission of MIB TV channels, given that all economic regulation of the broadcasting & DTH sectors is based on said retransmission.

If a satellite DPOs channel capacity is inadequate to carry broadcast content due to an over abundance of PS channels, mechanisms must allow for the carriage of authorized broadcast content in market-friendly time frames. It is critical for the distribution capacity of DPOs to be used for the carriage of content as laid out under the uplinking and downlinking guidelines.

No such limits are necessary for terrestrial mediums of distribution.

Further, since absolute limits on the number of PS channels are undesirable, all limits must be based on a percentage of channels carried by satellite DPOs.

Issue 3: Security Clearance of MSOs and LCOs

The Authority noted (in its original recommendations) *"that all DPOs, other than MSOs and LCOs operating in non-DAS areas, are already security cleared. For these MSOs and LCOs, the Authority recommends that at any time before the MIB obtains the security clearance, it is determined that the programming service offered on PS and which has been registered on the online system is inimical to India's national security or to the public interest, MIB may require the DPO to withdraw from distribution the PS Channel or the programming service and/ or cancel the registration."*

MIB's View vide its letter dated 23.10.2020

- (i) TRAI's assumption that all the DPOs operating in DAS areas are security cleared is not correct since security clearance for LCOs is not a pre-requisite for grant of registration. Further, with the completion of digitization process there is no distinction between the DAS and non-DAS areas. At

present about 72% MSOs are not security cleared by MHA as during their registration period security clearance was not a pre-requisite. More so, none of the LCOs are security cleared.

- (ii) Taking note of this, it is recommended to extend TRAI recommendation for security clearance of MSOs/LCOs in non-DAS areas, to all MSOs / LCOs who are not security cleared and wish to offer PS to their subscribers.
- (iii) That is to say, MIB will obtain security clearance of all MSOs / LCOs, who wish to offer PS and were not MHA security cleared at the time of registration, while they run their PS. However, if at any time before the MIB obtains the security clearance, it is determined that the programming service offered on PS and which has been registered on the online system is inimical to India's national security or to the public interest, MIB may require the MSO / LCO to withdraw from distribution of the PS Channel or the programming service and / or cancel the registration.

We agree with the MIB and TRAI's assessments that since digitization is now complete, all MSOs offering PS must be security cleared.

Issue 4: Definition of Platform Services

In its original recommendations, the TRAI defined Platform Services (PS) as *"programs transmitted by Distribution Platform Operators (DPOs) exclusively to their own subscribers and does not include Doordarshan channels and registered TV channels. PS shall not include foreign TV channels that are not registered in India."*

In its letter to TRAI dated 23.10.2020, the MIB proposed the adoption the above definition with respect to Platform Services offered by MSOs / LCOs as well as *"by appropriately replacing the word "DTH" with "MSO/LCO" wherever required"*

In its original recommendations, the TRAI also drew a distinction between platform services and ground based channels. To avoid any confusion resulting from varying interpretations, we request the Authority to consider the inclusion of ground-based channels along with Doordarshan channels and registered TV channels.

A free and fair market is critical for entry of new creative content from domestic and international producers and creators. We there urge the authority to consider the potential negative impact of restricting market mechanisms and agreements, such as those around exclusivity. These should be left to market forces to allow for the emergence and success of local artists and DPOs attempting to differentiate themselves in a competitive market.

Issue 5: Restrictions on Programmes that can be transmitted on PS

In its recommendations dated 13.11.2019, the Authority recommended that:

- (i) The programme transmitted by the DTH operator as a platform service shall be exclusive and the same shall not be permitted to be shared directly or indirectly with any other Distribution Platform Operator (DPO).
- (ii) Programme transmitted by the DTH operator as a platform service shall not directly or indirectly include any registered TV channel or Doordarshan channel or foreign TV channel. Time-shift feed of registered TV channels (such as +1 services) shall not be allowed as a platform service.

- (iii) DTH operator shall ensure and provide an undertaking to the Ministry in the format prescribed by the Ministry that the programme transmitted is exclusive to their platform and not shared directly or indirectly with any other DPO.
- (iv) In case the same programme is found available on the PS of any other DPO, MIB/TRAI may issue direction to immediately stop the transmission of such programme. MIB also reserves the right for cancellation of registration of such PS of the DTH operator.

We urge the authority to reconsider the provisions around exclusivity of PS channels. The harm sought to be prevented from the imposition of exclusivity provisions on PS channels are adequately covered by the Copyright Act, and another protective layer via regulatory fiat may be unnecessary. Further, provided that even if licensing and sub licensing agreements among DPOs and content providers are in order, such provisions could impede the provision of services that may both be appreciated by consumers, as well as benefit local DPOs that may not be able to licence content directly from creators and studios.

Issue 6: Activation/deactivation of PS offered by DPOs

(a) TRAI's Recommendations dated 13.11.2019

The Authority recommends that the DTH operators shall provide an option of activation/deactivation of platform services as prescribed in the orders/directions/regulations issued by TRAI from time-to-time.

(b) MIB's View vide its letter to TRAI dated 23.10.2020

It is proposed to adopt the above recommendations in respect of Platform Services offered by MSOs / LCOs also by appropriately replacing the word "DTH" with "MSO/LCO" wherever required

(c) Summary of TRAI's Response in the current CP dated 07.12.2020

TRAI agrees with the views of MIB as this help the consumers in exercising choice.

We agree with the TRAI and MIB that an option to activate/deactivate platform services should be provided to consumers. We do however urge the authority to exercise restraint in the regulation of the platform services, since when left largely to market forces, PS have the potential to help local providers effectively differentiate their offerings, especially in competitive markets. A minimum set of guidelines that both protect the interests of consumers (activation/deactivation, labelling etc), as well as allow for free and fair market exchanges (content exclusivity) to take place would be the most suitable framework for the regulation of Platform Services.

Issue 7: Separate categorisation of "Platform Services" in the EPG

Please see our response to the previous issue (Issue 6)